

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE SMITHVILLE TELEPHONE COMPANY

The Smithville Telephone Company ("Smithville"), pursuant to Section 1.415 of the Commission's Rules¹ and in response to the Notice of Proposed Rulemaking issued by the Commission on January 11, 1996,² respectfully submits its comments in opposition to the proposal to mandate "bill and keep" compensation arrangements among interconnecting carriers. Smithville provides basic telephone exchange service to approximately 27,500 subscribers in rural Indiana.

Smithville questions the basis for continuing this proceeding at a time when the Commission has indicated that its resources are so very burdened. The Commission has an established policy regarding the interconnection of commercial mobile radio service (CMRS) providers with the landline network. There is no indication that the policy has failed; there is no evidence that the provision

^{1/} 47 C.F.R. § 1.415.

^{2/} In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 94-54, Notice of Proposed Rulemaking ("Notice"), released January 11, 1996. By Order and Supplemental Notice of Proposed Rulemaking released in this docket on February 16, 1996, the comment period was extended to March 4, 1996.

CH4

of cellular service has been impeded by the existing policy. The initiation of new CMRS networks by PCS licensees hardly provides a rational basis for discarding a system that works.

Established Commission policies and principles regarding the establishment of connecting carrier arrangements dictate the fact that mandatory bill and keep arrangements are inappropriate. The "administrative ease" of a mandatory bill and keep arrangement and the lure of simplicity does not disguise the facts. Mandatory bill and keep compensation arrangements are simply a mechanism to promote the business interests of a few at the expense of the general public interest and ordinary telephone service ratepayers.

Smithville is appreciative of the fact that the recently enacted Telecommunications Act of 1996 incorporates rational principles in prescribing the methodology by which interconnection arrangements are established. The legislative mandate renders mandatory bill and keep impermissible. But even if the 1996 Act had not been passed by the Congress, the Commission should not have implemented this "simple" proposal which has such complex ramifications.

Pursuant to the Communications Act of 1934 and the Commission policies established pursuant to the Act, the Commission has always required through rates for interstate services to be established on the basis of the cost of providing the service. Regulated carriers were traditionally entitled to a distribution of the revenues associated with connecting carrier service in order to ensure the carrier's recovery of its cost of providing service. This

principle has been similarly applied with regard to intrastate service subject to a state's jurisdiction. Compensation agreements for service provided to a connecting carrier has, consistent with this principle, been set forth in tariffs or contracts between the parties.

The Commission previously determined that the compensation arrangements between landline service and radio service providers would be subject to negotiated contract rather than a filed interstate tariff. The Commission has previously recognized that there is no basis for departure from established principles; the negotiated contract can reflect mutually agreed upon terms and conditions that reflect recovery of costs for both the landline and radio common carrier that interconnect. The imposition of mandatory bill and keep would result in an unjustified disregard of established policy.

Smithville does not suggest that "bill and keep" arrangements should not be permitted; but, Smithville does insist that such arrangements should not be mandated. It is conceivable that two parties could reasonably determine that a bill and keep arrangement is appropriate under the specific circumstances of the parties. Under these circumstances, each party would have independently concluded that the value of interconnecting with the other sufficiently approximates the costs it incurs to provide the other with interconnection. In making this determination, each party would be able to consider the factors it finds pertinent including, but not limited to, the volumes of traffic exchanged and the

existing and anticipated cost of providing service.

A mandated bill and keep arrangement, however, ignores these factors. If the Commission could require a landline carrier to provide essentially free interconnection to a CMRS provider, the Commission would essentially be mandating that the landline carrier must discriminate in favor of CMRS providers and against its basic service and exchange access customers. When the landline carrier's value of interconnection with the CMRS provider is less than the cost it incurs in providing interconnection, the unrecovered costs must be recovered from other classes of users. In the case of small rural telephone companies like Smithville, the only choice would be to recover the costs from higher rates charged for basic local service and exchange access service. The only instance of which Smithville is aware in which interconnection of carriers is sometimes provided on a mandatory bill and keep basis is that of extended area service (EAS). Traditional EAS arrangements among connecting carriers have been authorized in a fully regulated environment in order to provide basic service customers with calling scopes and rate designs consistent with public policy. Smithville is unaware of any regulatory body previously proposing a mandatory bill and keep arrangement simply to promote the interests of one class of carrier at the potential expense of basic landline ratepayers.

These concerns become even greater with the possibility of arbitrage that would be created by mandatory bill and keep arrangements between landline and CMRS providers. Undoubtedly, the

Commission may not have considered the fact that its proposal establishes the potential for an interexchange carrier (IXC) to avoid the landline carrier's switched access charges. The IXC could interconnect its traffic with the CMRS provider and pay the CMRS provider an amount less than switched access charges to interconnect its traffic with the landline carrier under the free mandatory bill and keep arrangement.

The very possibility of mandated bill and keep raises concerns regarding the effective confiscation of a carrier's property. Landline and CMRS providers are equally entitled to the opportunity to provide service and recover their costs. The notion that the Commission would force a landline carrier to provide service for free to a CMRS provider, or any class of carrier, is potentially chilling to the considerations of making additional investment in infrastructure. These concerns are exacerbated by the potential that other classes of connecting carriers would likely claim a right to a mandatory bill and keep arrangement if this essentially free interconnection is given to CMRS. The only class of customers from which rural companies like Smithville could recover its costs under this scenario would be its basic rural ratepayers.

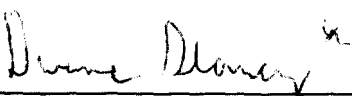
The passage of the Telecommunications Act of 1996, thankfully, alleviates Smithville's concerns that the Commission would neglect its established interconnection policies and adopt its mandatory bill and keep proposal. The 1996 Act, in fact, embraces many of the Commission's established policies regarding interconnection agreements by requiring negotiated cost-based

compensation arrangements. Sections 251 and 252 of the 1996 Act establish the framework for negotiated arrangements with mutual, reciprocal cost recovery, and provides for state commission arbitration between the carriers to the extent negotiations fail to result in a mutually acceptable arrangement. The 1996 Act permits, but does not require carriers to enter into bill and keep arrangements.

Smithville respectfully submits that even in the absence of the passage of the 1996 Act, the Commission should not have adopted the mandatory bill and keep proposal. This proposal would have served the interests of one business segment at the expense of the overall public interest. With the passage of the 1996 Act, the Commission should now clearly reject further consideration of mandatory bill and keep and refrain from the further expenditure of its resources on this matter.

Respectfully submitted,

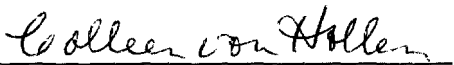
SMITHVILLE TELEPHONE COMPANY

By: 
Dwane Glancy, Treasurer
Smithville Telephone Company
1600 West Temperance Street
Ellettsville, Indiana 47429

March 4, 1996

CERTIFICATE OF SERVICE

I, Colleen von Hollen, hereby certify that a copy of the foregoing "**Comments**" on behalf of the **Smithville Telephone Company, Inc.** in CC Docket No. 95-185 was served on this 4th day of March 1996, by hand delivery, to the following parties:


Colleen von Hollen

Kathleen M.H. Wallman, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Mr. David Sieradzki
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 534
Washington, DC 20554

Ms. Kathleen Franco
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, 5th Floor
Washington, DC 20554

Ms. Janice Myles
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, 5th Floor
Washington, DC 20554

International Transcription Services, Inc.
1919 M Street, NW, Room 246
Washington, DC 20554